

CANYONEERS, INC.

IBLA 77-248

Decided June 9, 1977

Appeal from decision of the Utah State Office, Bureau of Land Management, denying in part renewal of a special recreation use permit.

Reversed.

1. Administrative Practice -- Public Lands: Special Use Permits --
Special Use Permits

A special recreation use permit for commercial boat operations may be denied renewal for nonuse over a 2-year period of any allocated passenger days under a properly noticed "use or lose" policy. However, where the permit program is relatively recent and administrative techniques are not fully reliable, and where the appellant documents on appeal some use of its allocation during the 2-year period, the permit should not be denied renewal under the "use or lose" policy.

APPEARANCES: Michael C. Benchoff, Esq., Phoenix, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Canyoneers, Inc., appeals from the March 3, 1977, decision of the Utah State Office, Bureau of Land Management (BLM), approving the decision of the BLM District Office, Moab, Utah, not to renew a special recreation use permit for commercial boat trips through Desolation Canyon on the Green River. Appellant did receive renewal of its permit for trips on two other rivers for 1977 (Permit No. MD-77-044-R).

Appellant had been issued annual permits for commercial operations on the Green River for several years prior to 1977. The 1975 and 1976 permits allocated to appellant 400 passenger days of use on the Green River. The permits define "passenger day" in Exhibit B, section 14B.(5), as "one commercial passenger, paying or nonpaying, except as noted below, on the river for one calendar day, or a portion thereof." The exceptions exclude from the definition crewmen and trips for the purpose of training boatmen and crewmen.

On December 27, 1976, the District Office sent guidelines to appellant for the renewal of its 1976 permit. Guideline 3, entitled "Use it or Lose it" Policy, stated that "permits will not be renewed where outfitters have made no use during the past two seasons." Also on December 27, the District Office informed appellant by letter that its records showed no use by appellant of its Green River allocation for 1975 and 1976. Appellant responded by giving the District Office the dates of 2 trips in 1975 using 100 passenger days and 3 trips in 1976 using 145 passenger days. The State Office eventually approved the denial of renewal "in the absence of any documents which satisfactorily show the commercial use claimed."

In letters to the District Office, State Office and this Board, appellant has stated that it conducted commercial operations on the Green River during 1975 and 1976. It blames the system used by BLM for collecting Trip Notification Forms as responsible for BLM not having records on any of appellant's Green River trips. Following an extension of time for filing a statement of reasons on appeal, appellant has submitted affidavits from two customers attesting to trips they took on the Green River in 1975 which were conducted by appellant. Appellant again alleges the inadequacy of the Trip Notification Form system to provide accurate record of trips and relies on a March 4, 1977, letter from BLM emphasizing the need to document trips as evidence of this inadequacy. Among other matters, it requests that BLM's decision be reversed and its renewal permit be granted.

[1] The special recreation use permit program was established by BLM under the general authority of the Secretary of the Interior to administer the public lands. Canon Tours, Inc., 20 IBLA 216 (1975); see 43 CFR 2920.0-2. 1/ As such, the procedures for

1/ Following the passage of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq., special land use permit authority under 43 CFR 2920 is no longer applicable. Organic Act Directive No. 76-15 (December 14, 1976). Temporary use permits are issued pursuant to section 302(b) of the Act, 43 U.S.C. § 1732(b), under the procedures formerly applicable to the special land use permits, until regulations are issued. Directive No. 76-15, supra at section L.3.; see Wilderness River Outfitters and Trail Expeditions, Inc., 30 IBLA 148, n.1 (1977).

issuance and management are within the discretion of BLM. Appellant was on notice by Exhibit B, section 14E.(3), attached to his prior permits, that BLM retained authority to reduce future passenger day allocations to the extent of nonusage. The "use or lose" policy is consistent with this notice and is obviously a proper management technique for administering use of the rivers.

However, as this Board stated in Wilderness River Outfitters and Trail Expeditions, Inc., 30 IBLA 148, 152 (1977), "the river operation permit program is relatively recent and the operators have not had time to appreciate fully its nuances." In that decision, the Board reversed a decision by the Utah State Office denying renewal of a permit for failure to use passenger day allocations during the May 1 to September 30 season in 1975 and 1976, although a trip had apparently been conducted out of season.

Here, appellant was denied renewal for failure to use any of its allocated passenger days on the Green River during 1975 and 1976. However, appellant has sufficiently documented on appeal that it conducted commercial operations on the Green River in 1975. The lack of records at BLM of use by appellant is not sufficient ground to deny renewal of his permit for 1977. As appellant pointed out, BLM, by its letter of March 4, 1977, is improving its system for recording trips on the rivers, including sending summaries of passenger days used to permittees on a periodic basis.

All else being regular, we would renew appellant's permit for 1977. Accordingly, we reverse the BLM decision. Wilderness River Outfitters and Trail Expeditions Inc., *supra*. This conclusion makes it unnecessary to discuss and rule on various alternative motions made by appellant. We would also remind appellant that it is now charged with awareness of the consequences for failure to properly document its operations under its permit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for further proceedings consistent with this opinion.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

